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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,627	10/01/2001	Masakazu Karita	31.001-AG	2280

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JUDGE PATENT FIRM
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JAPAN

EXAMINER

SZMAL, BRIAN SCOTT

ART UNIT PAPER NUMBER

3736

DATE MAILED: 05/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,627

Applicant(s)

KARITA, MASAKAZU

Examiner

Brian Szmaj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 13-18, 21, 22 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 7, 12, 19, 20 and 23-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Claims 10 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Specification

2. The abstract of the disclosure is objected to because the abstract is over 150 words in length. Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: The elements disclosed in pages 13-23 of the specification are not supported by known scientific principles pertaining to magnetic or electromagnetic devices, and contain anecdotal evidence claiming the functionality of the device in certain medical and non-medical situations.

Appropriate correction is required.

Claim Objections

4. Claim 7 is objected to because of the following informalities: The claim states "bar magnets are plate magnets". Bar magnets are inherently different in structure from a plate magnet. Appropriate correction is required.
5. Claim 12 is objected to because of the following informalities: The preamble states a method for using a device, but it appears the device structure is being claimed as well as the method of using the device, causing the metes and bounds of the claim to

not be clearly set forth. Furthermore, structural limitations in the preamble of the claim are not given any patentable weight. Appropriate correction is required.

6. Claims 19, 20 and 23-25 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot refer to other multiple claims. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13-18, 21, 22 and 26-28 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The above claims pertain to the application of elements to the device that are frivolous due to the lack of scientific principles to back the use of the elements to obtain the claimed results. Furthermore, the use of an insertion body inside the center of the device, a print of a picture that is burned and the ashes are placed inside the center of the device, recording sound, listening to the sound, purifying water using the insertion body, bathing in water containing the insertion body, or burning the print near any type of food, as claimed in Claim 28, and either consuming the food or placing the food on the body does not provide any health benefits that are supported by accepted modern scientific principles. The use of the elements in conjunction with the device and insertion member, at best, constitute the creation of a placebo effect in the user, causing the user to believe the device works

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when in fact the device is inert. Therefore, the claims lack patentable utility. See *In re Ruskin*, 354 F.2d 395, 148 USPQ 221 (CCPA 1966); *Fregeau v. Mossinghoff*, 776 F.2d 1034, 227 USPQ 848 (Fed. Cir. 1985); and *In re Citron*, 325 F.2d 248, 253, 139 USPQ 516, 520 (CCPA 1963).

Claim Rejections - 35 USC § 102 & 35 USC § 103

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Meikka et al.

Meikka et al disclose a high power low RPM DC motor and further disclose a bar magnet with an obverse side being the North pole and the reverse side being the South pole, running lengthwise; non-magnetic yet electroconductive wire; the wire is coiled around the bar magnet from one end to the other in the lengthwise direction; a plurality of magnets numbering at least four; the wire and shaping support material is copper;

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and the wire is a continuous strand of electroconductive wire. See Column 19, lines 4-45; Column 21, lines 65-67; and Column 22, lines 1-26.

Even though Meikka et al do not disclose the multiple directions the wire is wound around the magnet, the directions of the windings are simply an obvious engineering design choice since the direction of the winding of the wire does not affect the electromagnetic field when electricity is applied to the winding. Furthermore, the configuration of magnets forming a tubular hollow can be achieved from routine experimentation with the magnets. It is well known in the art that a number of bar magnets, when arranged side-to-side, can form a hollow center portion when the opposing poles attract one another. The placement of a shaping material on the outside of the arranged magnets is also an obvious engineering design choice since the material can keep the magnets in position as well as provide an electromagnetic source to the entire assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmaj whose telephone number is (703) 308-3737 and group fax number is (703) 308-0758. The examiner can normally be reached on Monday-Friday, with second Fridays off.



BS
May 8, 2003



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